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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation Against:

Case No. 2010-243

13 **AGNES L. JUDD, a.k.a.**  
**AGNES L. HOWARD**  
14 **1175 E. La Moore Rd., Apt 10**  
**San Marcos, CA 92078**

**ACCUSATION**

15 **Registered Nurse License No. 304814**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about July 31, 1979, the Board of Registered Nursing issued Registered Nurse  
24 License Number 304814 to Agnes L. Judd, a.k.a. Agnes L. Howard (Respondent). The  
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on November 30, 2010, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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1 8. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed nurse or  
3 deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the  
5 following:

6 . . . .

7 (f) Conviction of a felony or of any offense substantially related to the  
8 qualifications, functions, and duties of a registered nurse, in which event the record of  
9 the conviction shall be conclusive evidence thereof.

10 . . . .

11 9. Section 2762 of the Code states:

12 In addition to other acts constituting unprofessional conduct within the meaning  
13 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
14 licensed under this chapter to do any of the following:

15 . . . .

16 (b) Use any controlled substance as defined in Division 10 (commencing with  
17 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
18 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
19 dangerous or injurious to himself or herself, any other person, or the public or to the  
20 extent that such use impairs his or her ability to conduct with safety to the public the  
21 practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription, consumption,  
23 or self-administration of any of the substances described in subdivisions (a) and (b) of  
24 this section, or the possession of, or falsification of a record pertaining to, the  
25 substances described in subdivision (a) of this section, in which event the record of  
26 the conviction is conclusive evidence thereof.

27 . . . .

## 28 REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the  
qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations  
listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

1 (c) Theft, dishonesty, fraud, or deceit.

2 (d) Any conviction or act subject to an order of registration pursuant to Section  
3 290 of the Penal Code.

4 11. California Code of Regulations, Title 16, section 1445 states:

5 . . . .

6 (b) When considering the suspension or revocation of a license on the grounds  
7 that a registered nurse has been convicted of a crime, the board, in evaluating the  
8 rehabilitation of such person and his/her eligibility for a license will consider the  
9 following criteria:

10 (1) Nature and severity of the act(s) or offense(s).

11 (2) Total criminal record.

12 (3) The time that has elapsed since commission of the act(s) or offense(s).

13 (4) Whether the licensee has complied with any terms of parole,  
14 probation, restitution or any other sanctions lawfully imposed against the licensee.

15 (5) If applicable, evidence of expungement proceedings pursuant to  
16 Section 1203.4 of the Penal Code.

17 (6) Evidence, if any, of rehabilitation submitted by the licensee.

## 18 **COST RECOVERY**

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
20 administrative law judge to direct a licentiate found to have committed a violation or violations of  
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
22 enforcement of the case.

## 23 **FIRST CAUSE FOR DISCIPLINE**

24 **(June 10, 2009 Criminal Conviction for Driving With a**

25 **BAC of 0.15% or More on April 8, 2009)**

26 13. Respondent has subjected her license to disciplinary action under sections 490 and  
27 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
28 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
follows:

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1           a.     On or about June 10, 2009, in a criminal proceeding entitled *People of the State*  
2 *of California v. Agnes L. Judd*, in San Diego County Superior Court, case number CN260813,  
3 Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152,  
4 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, a  
5 misdemeanor. The conviction was enhanced in that Respondent drove with a BAC of 0.15  
6 percent or more, within the meaning of Vehicle Code section 23578.

7           b.     As a result of the conviction, on or about June 10, 2009, Respondent was  
8 sentenced to five years summary probation, completion of a First Conviction Program,  
9 completion of a MADD Impact Panel, completion of five days of public work service, standard  
10 alcohol conditions, and payment of \$1,920 in fees, fines, and restitution.

11           c.     The facts that led to the conviction were that on or about the morning of April  
12 8, 2009, an officer from the Oceanside Police Department received a report of a possible DUI  
13 driver (Respondent) who left a convenience store after attempting to purchase alcohol. The  
14 convenience store clerk refused to sell her alcohol because Respondent appeared intoxicated.<sup>1</sup>  
15 The officer obtained a description of Respondent, the license plate of her vehicle, and her address  
16 from her vehicle registration. The officer intercepted Respondent as she pulled into her driveway.  
17 The officer had Respondent exit her vehicle and noted that she showed obvious signs/symptoms  
18 of being under the influence: slurred speech, watery eyes, and an unsteady stance. Respondent  
19 initially denied having consumed any alcohol that day, but later admitted to drinking a bottle of  
20 wine the night before. The officer explained the field sobriety tests and directed Respondent to  
21 place her feet together. Respondent refused to cooperate and walked towards her front door.  
22 Two officers grabbed Respondent by her arms as she attempted to enter her residence.  
23 Respondent was told that she could either perform the sobriety tests or she would be arrested  
24 based on their observations. Respondent asked to be arrested. At the police station, Respondent  
25 submitted to two breath tests which yielded results of 0.20 and 0.21 percent BAC.

26  
27           <sup>1</sup> The store clerk stated to the investigating officer that Respondent was a "regular" and  
28 would come to the convenience store every morning around 6 a.m. to purchase four Steel Reserve  
beers.

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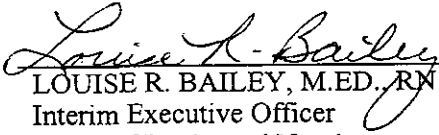
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 304814, issued to Agnes L. Judd a.k.a. Agnes L. Howard;
2. Ordering Agnes L. Judd a.k.a. Agnes L. Howard to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/3/09

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SD2009702781